

### **REMARKS/ARGUMENTS**

Claims 20 and 33 are amended to delete "cysteine" in the claims in response to the Office Action. Claims 31 is amended to be placed in a better form. It is believed that the present amendments do not raise new matter. Nor does the amendments raise new issue or impose unduly burden on the Examiner. Entry of the above amendments is respectfully requested. Upon entry of the present amendments, claims 20, 22-27, 30-31, and 33-35 are pending . Reconsideration of the present Office Action is respectfully requested.

Claims 20, 22-24, 26-27, and 33-35 are rejected under 35 U.S.C. §103(a) as being unpatentable over Mizukami et al. (EP 0882983 A2) in view of Sosnowski et al. (WO 98/10273).

According to the Examiner, Mizukami discloses a reagent comprising polymethine dye and a quaternary ammonium surfactant at a pH ranging from 4.5 to 11. The reagent is used to stain leukocytes. Sonowski teaches that cystein has a buffering capacity at pH 4-6. The Examiner thus concludes that a person of ordinary skill in the art would apply cystein as a buffer in Mizuami's reagent and therefore arrive at the invention of claims 20, 22-24, 26-27, and 33-35.

Applicants have now amended claims 20 and 33 by removing cystein from the Markush group recited therein. Hence, due to the present amendments, the rejection of claims 20, 22-24, 26-27, and 33-35 become moot.

Mizukami and Sosnowski, taken together, do not teach any of mercaptoacetic acid, 3-mercaptopropionic acid, sulfamic acid, sulfanilic acid, sulfurous acid, glutathione, and salts thereof; sulfanilamide; mercaptoethanol; thiophenol; and urea recited in claims 20, 22-24, 26-27 and 33-35.

Moreover, as explained in detail in the specification, the presentlyclaimed reagent can rapidly and effectively stain bacteria in a sample, even if the nitrite ions are present therein (see, e.g., page 3, lines 13-16, page 20, line 5 to page 21, line 1). Neither Mizukami nor Sosnowski

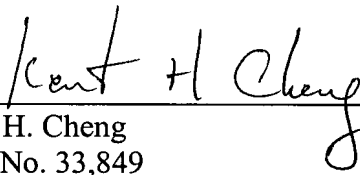
disclose or suggest such an "unexpected result" or provide a solution to address the problem of conventional method of counting bacteria when the nitrite ions are present. See MPEP 7167.02(c) ( EVIDENCE OF UNEXPECTED AND EXPECTED PROPERTIES MUST BE WEIGHED.); *Diversitech Corp. v. Century Steps, Inc.* 7 U.S.P.Q.2d 1315 (Fed. Cir. 1988) (Federal district court, in holding claims invalid for obviousness under 35 U.S.C. §103, erred by failing to include objective evidence in its determination, and such objective evidence, when considered in conjunction with findings on prior art, warrants finding that defendant failed to meet its burden of proving obviousness by clear and convincing evidence.). This further indicates that claims 20, 22-24, 26-27, and 33-35 are not obvious over Mizukami in view of Sosnowski under 35 U.S.C. 103(a).

Therefore, Applicants respectfully request that the Examiner withdraw the rejections of claims 20, 22-24, 26-27, and 33-35 and the objection to claim 25, which depends from claim 20.

Based on the foregoing, Applicants believe that the present application is placed in condition of allowance. Early and favorable consideration is respectfully requested.

It is believed that no fees or charges are required at this time in connection with the present application. However, if any fees or charges are required at this time, they may be charged to our Patent and Trademark Office Deposit Account No. 03-2412.

Respectfully submitted,  
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